

SECTION VIII

TENANT DEMOGRAPHICS / HOUSEHOLD COMPOSITION

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Following is a partial listing of rules governing the eligibility of certain tenants. For more information regarding tenant eligibility, consult Section 42 of the Code or a LIHTC textbook or guide.

- For information about the **Fair Housing Act**, see Part 1000.
- For information about **General Public Use Requirements**, see Part 950.
- For information about **ineligible facilities**, see Part 955.

Part 800 : Determining Household Composition

Household composition is determined based on the guidelines outlined in HUD Handbook 4350.3. An excerpt of the handbook is included in Appendix D.

Part 805 : Occupancy Guidelines

There are no current tax credit requirements governing minimum or maximum household size for a particular unit; however, owners must comply with all applicable local laws, regulations, and/or financing requirements (e.g. Section 8, Rural Housing Services). MSHDA advises all owners or agents to be consistent when accepting or rejecting applications. Occupancy guidelines should be incorporated into the development's management plan. Management should be aware of occupancy standards set by federal, state, HUD, PHA, civil rights laws, tenant/landlord laws, and municipal code that may establish a maximum or minimum number of persons per unit.

Part 810 : Full-Time Students

Under LIHTC regulations, if a single applicant (or present tenant) or all applicants (or present tenants in a unit) are full-time students and not married, then that household is usually not eligible to reside in an LIHTC unit, unless it meets one or more of the student exemptions discussed below. A household is ineligible if all members of the household are full-time students at the time of initial occupancy or will be at any time during the certification period. Should the IRS provide additional guidance and clarification as to the definition of full-time students at some time in the future, this compliance manual may be amended by MSHDA.

1. Definition of a Full-Time Student

The applicable definition of a student is a full-time at an educational institution with regular facilities, other than a correspondence school. To document student status (for full-time students and for those persons claiming to be part-time students), a letter should be obtained from the educational institution indicating that it classifies the person as a “full-time” or “part-time” student. When defining a full-time student also note the following:

- Include those persons who are full-time pupils in a junior college, community college, vocational school with a diploma or certificate program, or technical school as full-time student.
- Per Best Practices issued by the National Council of State Housing Agencies (NCSHA), “full-time student” does not include persons under the age of 18 who are full or part-time students in kindergarten, elementary, middle school, or high school as ineligible full-time students.
- Include those persons completing an internship, thesis, or research as part of an academic program for educational credits if the school classifies the particular student as “full-time”.
- Include those persons who are on break from school, including summer and spring breaks, but are planning to return to school for the next semester.
- Do not count as ineligible a household comprised of students if at least one member of that household is a part-time student or a non-student.
- Do not count as ineligible a household containing full-time students and at least one child (who is not a full-time student).

Also note the following in regard to full-time students and student households:

- All household members over the age of 18 (including) those persons who are full-time or part-time students) and emancipated minors, who are not the dependent of another person in the household (i.e. being claimed on that person’s tax return) must be deemed as head of household, spouse, or co-head for LIHTC purposes. As discussed in **Part 640 (Income and Assets of Full-Time Students)** of this manual, all income, whether earned or unearned, of such persons must be included as part of household income.
- Head start, preschool, and nursery school do not count as “school” for LIHTC-purposes.
- Persons studying for the GED and persons attending adult education or night school (for the purpose of obtaining a high school diploma or GED) are not considered to be “full-time students”.
- Persons who are participants in apprenticeship or receiving on-the-job training (not necessarily funded under the JTPA) are not considered “full-time students”.
- Part-time students are not counted as “full-time students”.

- Persons who are full-time students and also employed full-time are still counted as full-time students.
- To be deemed a “student household”, the unit must be occupied entirely by household members who are ineligible full-time students. If any of the household members is a non-student or attends school part-time, or if any member qualifies under one of the exceptions discussed below, the household is not deemed a “student household”. For any household which has a full-time or part-time student over the age of 18, the eligibility status of the household should be updated every semester.

2. Exceptions to Full-Time Student Exclusion {IRS Section 42(i)(3(D))}

A household that is comprised entirely of full-time students may still be eligible to reside in an LIHTC unit if at least one member is:

- Married and filing a joint tax return;*
- Receiving assistance under Title IV of the Social Security Act (welfare);*
- Enrolled in a job training program receiving assistance under the Job Training Partnership Act (JTPA) or under other similar federal, state, or local laws;*
- A Single parent receiving AFDC payments with minor children who are also students; or*
- A Single parent with minor children, non of whom is a dependent of a third party.*

3. Common questions regarding student eligibility:

In regard to “*Married Persons who File a Joint Tax Return*”, note the following:

- For newlyweds who got married in the current calendar year and who have not yet filed a joint tax return but intend to file jointly for the present calendar year, a notarized statement (signed and dated by both spouses) indicating the intent to file jointly is acceptable. The owner/management agent should obtain a copy of the marriage license and the tax return, once filed, as documentation.
- For persons (including newlyweds and non-newlyweds) who were married prior to the end of the previous calendar year, but did not file a joint tax return for the previous calendar year, “intent” to file is not adequate and does not qualify the household for a student eligibility exception.

- The owner or management agent should obtain a copy of the last joint filing made by the married person(s)

In regard to *“Title IV of the Social Security Act”*, note the following:

- Includes only welfare benefits (commonly know as Temporary Assistance to Needy Families, public assistance, or Family Independence Program, formerly called AFDC). TANF is an acceptable Title IV program.
- The Food Stamp Program was funded under the Food Stamp Act of 1977, not Title IV of the Social Security Act, therefore, the receipt of food stamps alone does not qualify a household for this student exemption.
- Social Security benefits and Supplemental Security Income are not part of Title IV of the Social Security Act.
- Work-study and Pell Grants are not part of Title IV of the Social Security Act.

In regard to participants in a program similar to those funded under the Job Training Partnership Act, note the following:

- Pell Grants, GI Bill, ROTC, and work-study do not qualify as JTPA programs.
- Apprenticeship programs and trade schools do not qualify as JTPA Programs
- Includes only vocational programs funded by a local, state, or federal programs.
- Includes only vocational programs funded by a local, state or federal government agency.
- The Workforce Investment Act replaces JTPA.

In regard to *“Single parents receiving AFDC payments with minor children who are also students”*, note the following:

- The single parent receiving welfare benefits need not also be claiming the child(ren) as dependents on the tax return in order to be eligible under this exception.

In regard to *“Single parents with minor children, non of whom is a dependent of a third party”*, note the following:

- The minor children must be claimed on the tax return of the head or co-head of the household who is residing in the unit.

- If the children are claimed on the tax return of the single parent only in alternating years (i.e. as part of the conditions of a divorce agreement), such student household will be eligible to reside in the LIHTC unit only during the calendar year for which the head of household will claim the child(ren). This applies only if the alternating arrangement is part of an official agreement (i.e. terms of a divorce or court mandate) and does not apply to informal arrangements.
- For newly divorced or separated parents who have not yet claimed the child(ren) on his or her tax return, there must be an official agreement to do so for the current calendar year in order for this “intent to claim” to qualify the household under this student eligibility exception. If there is no official agreement, the children must have been claimed on the single parent’s most recently filed tax return and be claimed on the tax return for the current calendar year.
- This can include a full-time student over the age of 18 who is away at school, but is listed as the dependent on the tax return of a single parent residing in the unit.

Every full-time student over the age of 18 who is a member of any household residing in an LIHTC unit must complete a **Student Eligibility Certification (LIHTC form 049)** for the initial certification and for every recertification of the household. This completed form must be included in the tenant file. A copy of this form is included in **Appendix B** of this manual.

MSHDA encourages owners and managers of LIHTC projects to utilize a lease provision in all Housing Credit properties requiring tenants to notify management of any change in student status.

For additional information regarding students, see **Part 640-B (Income and Assets of Full Time Students)** of this manual.

LIHTC projects funded under this set-aside must have 100% of the units in all of the buildings of the project set-aside for elderly persons. Each Tenant/Unit File must include the name, date of birth, and proof of age (such as a copy of driver's license or birth certificate or documents provided by Social Security Administration) of the head of household. The Development File must include a completed Annual Project Summary (Form LIHTC 042), which details the number of units occupied by elderly persons. For information regarding projects funded under the elderly statutory set-aside, See **Part 1050 (Statutory Set-Aside for Elderly Projects)**.

1. LIHTC Projects funded prior to 1996 Michigan Qualified Allocation Plan (QAP)

A project that includes a set-aside for the elderly must conform to the Federal Fair Housing Act. The Fair Housing Act prohibits discrimination in residential rental activity, and prohibits adults-only housing unless the housing falls within stated exceptions for housing for older persons. In general, the Fair Housing Act lists the following permissible forms of the housing for the elderly.

- Housing intended for and solely occupied by residents who are 62 or older;
- Housing intended and operated for persons 55 or older, where at least 80% of the total housing units are occupied by at least one resident who is 55 or older; or
- The project is financed, constructed, and operated under the RHS (formerly FmHA) Section 515 program for the elderly (i.e. where each resident is either 62 or older or is a person with a handicap or disability, regardless of age, as such terms are defined in the RHS program).

The Authority does not administer or enforce the Fair Housing Act; however owners of projects that committed to a set-aside for the elderly must demonstrate they are operating in conformance with the Fair Housing Act. For more information, see Part 1000 (Fair Housing Act) and the Fair Housing Administration Web Site (www.hud.gov).

2. LIHTC Projects funded under the 1996 Michigan QAP and later

Pursuant to the MSHDA Act, elderly designated developments not subject to HUD rules must have units occupied by a single person who is 55 years of age or older or a household in which at least one member is 55 years of age or older and all other members are 50 years of age or older. Projects subject to HUD rules must follow HUD's definition of elderly. Projects that have received tax abatement based on their status as "elderly" must retain a copy of the tax abatement ordinance and must abide by the definition of elderly in the ordinance, which could have additional restrictions.

**Part 820 :: Persons with Special Needs /
 :: Developmentally Disabled**

As part of the Michigan Qualified Allocation Plan, MSHDA targets special needs groups. A special-needs group means a group identified by the Authority as requiring special targeting under the Tax Credit Program because of a lack of affordable housing, including large households, the elderly, persons with disabilities, and transitional housing for the homeless. In the tax credit application process, an owner may have committed to serve a special-needs group by setting aside a percentage of the units for that group. The Special-Needs Set-Aside, if any, and the percentage of units to be targeted are identified in the Reservation Application and in the Regulatory Agreement (Restrictive Covenant). All Special-Needs Set-Asides are determined using the lesser of the Unit Fraction or the Floor Space Fraction of the units in the Set-Aside. For all Special-Needs Set-Asides, an owner must maintain documentation to demonstrate affirmative marketing and other best efforts to fill the units with residents from the set-aside group.

Owners and managers of LIHTC projects must take care not to violate federal rules, including but not limited to the Fair Housing Act and Civil Rights laws. For a related discussion, see **Part 950 (Units Must be for Use by the General Public)**.

Projects that have targeting requirements should complete an annual project summary report (see **Part 710**).

**Part 825 :: Section 8 Recipients – Discrimination is
 :: Prohibited**

IRC Section 42(h)(6)(B) prohibits refusing to lease to a Section 8 voucher or certificate holder simply because that person is such a holder. A household is considered to be a “Section 8 participant” until such time that the amount of rental subsidy received by the household is reduced to zero (for any reason, such as an increase in income or withdrawal from the Section 8 program). Leasing policies that discriminated against or have the effect of excluding a large portion of Section 8 participants are prohibited. **Such prohibited leasing practices include imposing minimum income requirements for Section 8 participants.** Policies that require that all tenants earn, at least, for example, \$10,000, \$450, 50 cents or other amounts per year, are not allowed. It is permissible, however, to require that Section 8 holders show adequate income to pay the out-of-pocket portion of rent, such as three times (or other reasonable multiplier common in the rental housing industry) the amount of tenant-paid rent, not including the subsidy amount paid by Section 8.

For example, a prospective tenant applies for occupancy in a unit with a contract rent amount of \$500, of which Section 8 pays \$400 per month and the resident pays \$100. Since HUD requires that Section 8 participants pay at least \$25 per month, \$25 must be deducted from the tenant paid portion before multiplying by three. The minimum income that can be required of the Section 8 participant is \$100 less \$25 times three (\$75 x 3, which is \$2,700 annual).

A partial list of other unacceptable leasing practices include: requiring an excessive deposit amount; requiring that the head of household or at least one adult member be employed; requiring an excessive number of references; prohibiting current tenants from participating in the Section 8 program; and refusing to execute the Section 8 lease addendum. A household can be denied residency if it fails to meet any other consistently applied screening criteria (i.e. criminal background, eviction history, credit rating), with the exception of a minimum income requirement.

For more information regarding Section 8 participants, see [Part 680 \(Qualifying Section 8 Tenants for LIHTC Units\)](#) and MSHDA/LIHTC Policy #63 (Prohibition Against Applying Minimum Income Requirements to Section 8 Recipients), which is included in [Appendix C](#) of this manual.

Part 830 :: Tenants in LIHTC Projects Funded by RHS Projects

For information about LIHTC projects that have funding through RHS, see [Part 685 \(Qualifying Tenants in RHS Funded Projects for LIHTC Units\)](#).

Part 835 :: Citizenship / Legal Residency Requirements

Illegal aliens are not permitted to reside in LIHTC units. There are no other citizenship requirements for LIHTC units. For additional information regarding Citizenship, see [Part 1000 \(Fair Housing Act\)](#) and Civil Rights Laws.

Part 840 :: Transient Person

Under program guidelines mandated by the IRS, a unit cannot be tax credit eligible if it is used on a transient basis. A unit is deemed to be transient if the initial lease term is less than six months, with the exception of single-room-occupancy (SRO) developments assisted under the Stewart B. McKinney Act. When leasing to “transient” and other persons, owners and managers of LIHTC projects should note the following;

- It is not permissible to allow an agency to rent LIHTC units so that the agency can place its clients in the unit themselves, whether due to confidentiality, mental illness, etc. The tenant must enter into the lease agreement
- It is permissible to have a co-signer or guarantor endorse the lease for persons with no established credit or references.
- It is permissible to have a court-recognized guardian or Power of Attorney sign the certification paperwork if the household is unable to sign.

See [Part 675 \(Lease Agreements\)](#) and [Part 945 \(Units Must be for Non-Transient Use\)](#) for related discussions.

Part 845 :: Managers / Employees as Tenants

It is permissible for a manager, assistant manager, or other employee of the owner to reside in a unit within a project. An employee can reside in a unit that is designated as common area or in a rental unit. In order for a household to be eligible to reside in a unit that is designated as common area unit, the head of household (or co-head) must be a full-time employee at the particular development. Persons who are employed less than full-time at the development are not eligible to reside in a common area unit. Persons (such as regional managers) who are employed at multiple projects are not eligible to reside in a common area unit.

The manager or employee could be included as an eligible LIHTC-tenant if he or she is income-qualified. All tenants, including employees of the development, occupying LIHTC rental units that are not “common area” must be income-eligible, rent-restricted, and under a lease with an initial term of at least six months. If the manager or employee receives free rent or a rental discounts, the imputed value of the rent or discount must be counted as income.

For additional information regarding common area residential units, see **Part 930 (Common Area Residential Units)** and **MSHDA Policy # 10**, which is included in **Appendix C**.

Part 850 :: Live-In Care Attendants

A live-in care attendant for an LIHTC tenant should not be counted as a household member for purposes of determining the applicable income and rent limits. A live-in attendant is a person who lives with an elderly, disabled or handicapped individual(s) and is essential to that individual's care and well-being, not obligated for the individual's support and would not be living in the unit except to provide the support services. The need for a live-in care attendant must be certified with documentation included in the Tenant/Unit File (see **Part 755**). In order for a tenant to have a “live-in care attendant”, two criteria must be met:

- 1) The tenant must have documentation (i.e. letter from a doctor) indicating that he or she has a need for a live-in attendant. The letter from the doctor need not elaborate on the reason for the need of a live-in attendant or the medical condition of the tenant; and
- 2) The person acting as “live-in attendant” must be in the unit solely for the purpose of providing “live-in attendant” services to the tenant.

If the qualified tenant vacates the unit, the attendant must vacate as well. If an attendant would like to be certified as a LIHTC-qualified household according to initial eligibility requirements (see **Part 600 (Summary of Initial Tenant Certification Procedures)**).

- A. Married Persons Not Living with Spouse** – The income of all household members, including those members who are temporarily absent, must be included as part of total income. MSHDA/LIHTC assumes that all marital separations are temporary, unless documentation can be provided to indicate that it is permanent. The incomes and assets of both spouses must be included in calculating total household income if the separation is temporary. For additional information regarding married persons living apart from spouse, see MSHDA/LIHTC Policy #61 (Married Individuals Living Apart), which is included in Appendix C of this manual.
- B. Pregnant Women / Unborn Children and Children in the Process of Being Adopted** – In accordance with HUD Handbook 4350.3 CHG-27 (Section 8 Guidelines, Figure 3-6, page 3-56) unborn children and children who are in the process of being adopted (who do not live in the unit) are considered to be household members for the purpose of determining the approximate income limit. Their unearned income is not counted in determining annual income. Documentation of pregnancy (i.e. doctor's statement) must be provided and included in the tenant file.